

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

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**COMPLAINT OF THE NATIONAL  
ASSOCIATION OF POSTMASTERS OF THE  
UNITED STATES, THE LEAGUE OF  
POSTMASTERS, MARK STRONG, ROBERT  
RAPOZA, MARILYN SHAW, AND MARILYN  
HILL**

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**Docket No. C2011-3**

**COMMENTS OF THE AMERICAN POSTAL WORKERS UNION, AFL-CIO  
IN RESPONSE TO  
COMPLAINANTS' COMMENTS RE: OPPOSITION OF THE UNITED STATES  
POSTAL SERVICE TO COMPLAINANTS' MOTION TO RENEW COMPLAINT  
(November 29, 2011)**

On November 7, 2011, the Complainants filed a Motion to Renew Complaint and Request to Submit for Decision on an Expedited Basis Before December 1, 2011, or in the Alternative to Stay the Postal Service's Final Rule From Going Into Effect on December 1, 2011. The Postal Service filed its Opposition to the Complainants Motion on November 14, 2011. The Complainants responded to the Postal Service opposition via Comments filed November 22, 2011. The American Postal Workers Union, AFL-CIO, hereby files these comments in response to Complainants November 22, 2011 Comments.

**Should the Commission Entertain the Renewed Complaint, the Complaint Should be Dismissed as Premature**

In their Comments, the Complainants assert that "Our Complaint is not grounded in the Postal Service's intent, but in the actual language of the Rule, and what the reinterpretation of the word "consolidation" allows the Postal Service to do, and whether that would be consistent with Section 404." This assertion is incorrect and evidences the Complainants' intent to litigate an issue that is not ripe for review. The plain language of the regulations, the stated intent and the actual application of the

regulations are critical. If the declared intent, plain meaning of the regulations and likely applications are legal, then the Commission should not utilize its limited resources to pursue a complaint based solely on hypothetical harms. Accordingly, the Complaint should be dismissed as premature.

While Commission's Rules of Practice and precedent provide no standard for determining whether a complaint is ripe, case law pertaining to the Postal Service and/or the Administrative Procedures Act provides some useful guidance. For example, in *Burt v. Rumsfeld*, 322 F. Supp.2d 189, 201 (D.Conn., 2004)( A challenge to regulations implemented pursuant to the Solomon Amendment was ripe for judicial review) the Connecticut District Court stated:

To challenge a regulation, the Administrative Procedure Act ("APA") requires a party to show that the regulation has caused the plaintiff some concrete harm; in some cases, this may be satisfied by the promulgation of the regulation itself.

In *American Postal Workers' Union, AFL-CIO v. U.S. Postal Service*, 646 F.Supp.2d 1, 2 (D.D.C.,2009), the District of Columbia District Court, quoting the Supreme Court, explained "[a] claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.' " quoting *Texas v. United States*, 523 U.S. 296, 300, (1998).

In their original complaint and in their Motion to Renew, Complainants have failed to articulate an actual harm or injury resulting from the Postal Service's final regulations. Instead, Complainants rely on hypothetical situations resulting in abstract harms, none of which are likely to come to fruition. The Commission should not exercise jurisdiction in this case that deals with possible not actual harms. In *American Postal Workers' Union, AFL-CIO v. U.S. Postal Service*, the Court stated: "By requiring that claims be ripe before adjudication by a federal court, courts promote judicial economy, avoid becoming entangled in abstract disputes, and ensure a record adequate to support an informed decision when a case is heard." 646 F.Supp.2d 1, 2 (D.D.C.,2009) *citing* *Abbott Labs.*, 387 U.S. 136, 149 (1967). This reasoning applies equally to complaint cases before the Commission.

The Complainants also have not persuasively argued that the regulations on their face violate applicable provisions of Title 39 of the United States Code. Complainants allege that the Postal Service could have a single Postmaster for the entire country. The explanation and stated purpose of the Postal Service regulations does not automatically result in the wholesale elimination of Postmasters, or the placement of Postmasters over unmanageable territory and numbers of facilities. Instead, the regulations amount to a natural extension of procedures that append formerly independent facilities to the jurisdiction of another post office or Postmaster. Importantly, the ability of the Postal Service to reduce costs and improve management of facilities pursuant to these regulations will likely reduce the number of outright closures of postal operated retail facilities. Furthermore, implementation of the regulations on December 1, 2011, does not preclude Complainants from bringing a future, well grounded, ripe complaint to the Commission. If the Postal Service were ever to abuse these regulations in the worst case scenarios Complainants envision, that abuse would be ripe for a complaint, regardless of when the regulations came into effect. However, unless and until such abuse occurs under the implemented regulations, any complaint filed alleging mere hypothetical harm, like the present complaint, is premature and must be dismissed.

Furthermore, in arguing that the regulations violate Title 39, Complainants ignore the history of post office closings and the expansion of the jurisdiction of neighboring Postmasters to cover the territory of the closed office. Complainants also overlook the history of converting independent Post Offices into stations or branches; losing the Postmaster of the converted facility, with the Postmaster of the gaining postal installation taking jurisdiction. The DUOs may increase this behavior. When delivery is consolidated, the gaining postal installation and Postmaster may take jurisdiction over the neighboring offices that lose their carriers. All of these possibilities have limited geographical reach. There are clear limits based on geography and operations as to what makes as a postal installation under a Postmaster, which the Complainants fail to acknowledge or address.

Furthermore, no record evidence suggests the USPS intends or would create behemoth post offices just to rid itself of Postmasters. Converting independent Post

Offices to branches is legal. There is nothing in the law which creates a permanent attachment of a Postmaster to a building. A post office is more than a building. The Commission has clearly stated that some branches and finance stations might be post offices for purposes of closure appeals despite the fact the building did not have its own postmaster, but was part of a multi-facility installation under a remote postmaster's jurisdiction.

Also not addressed by the Complaints is the fact that it is clear the many post offices will be closed, others will get consolidated and some remaining facilities can be run at lower cost with different types of employees managed by fewer supervisors and fewer Postmasters. Not only does this lower costs to the point that more offices may remain in the network; but it improves management as managers tend to work full-time managing rather than selling stamps and sorting mail. If offices are reorganized in a manner that keeps a postmaster in charge of a reasonable number of facilities in a reasonable geographic reach; it can be argued that the postmaster function and purposes remain and the Postmaster knowledge of and availability to communities served remains. This result is far more likely under the current regulations than the hypothetical scenarios posited by Complainants. In any event, it too early to tell what impact the regulations will have, if any, on the Complainants and or postal consumers. Therefore, the Commission must dismiss the Complaint as premature.

**Should the Commission Move Forward on the Complaint, the Complainants' Request for an Expedited Schedule Should be Denied.**

Although APWU believes that the Motion to Renew the Complaint should be denied, or in the alternative, the Complaint dismissed, should the Commission decide to entertain the Complainant's Complaint, the Commission should not do so on an expedited schedule as requested by Complainants.

As briefed by the Postal Service, an expedited schedule would negatively impact the due process rights on the Postal Service and all interested parties. Moreover, an expedited schedule would violate the Commission's Rule of Practice regarding complaints which require an initial determination that the Complaint raises a material issue of fact or law, followed by a notice and order which institutes proceedings on the

complaint. The second phase of a complaint proceeding are critical to the development of a complete record for consideration of the Commission. Contrary to the assertion of the Complaints, the record in this case is not complete. For example, the merits of the regulations have not been fully briefed. As stated above, the Complainants rely on hypothetical concerns with no evidence of concrete harm. Were the Commission to find the Complaint has merit under Section 3663 of Title 39, it cannot render a legally sound and meaningful decision on this Complaint without a full briefing of all issues related to the regulations and their implementation.

Respectfully submitted,

Jennifer L. Wood  
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